

Appl. No. 10/688,118  
Atty. Docket No. 9066M2  
Amendment dated September 21, 2007  
Customer No. 27752

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ing of Claims:

1. (Previously Presented) A composition suitable for atomizing without excessive aerosolization in the form of an oil-in-water emulsion comprising:

- a) a continuous aqueous phase,
- b) a discontinuous oil phase;
- c) softening active ingredient;

wherein a) and b) comprise an oil-in-water emulsion and the rheology of the aqueous phase is modified by the addition of a water-in-oil emulsion into the oil-in-water emulsion, the water-in-oil emulsion comprising:

- i) a high molecular weight polymer having one or more pendant groups in a discontinuous aqueous phase, and

REMARKS

Claim Status

Claims 1-2 and 4-14 are currently under consideration. No additional claims fee is believed to be due.

Claims 3 and 15-20 are cancelled without prejudice.

It is believed that these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 U.S.C. §112, First Paragraph

Claims 1, 4, 6, and 14 are rejected under 35 U.S.C. §112, First Paragraph, for failing to comply with the written description requirement. The Office Action argues that the amended claims contain subject matter that the specification does not adequately describe such that it would be enabled to one of skill in the art. (Office Action dated August 31, 2007, p. 4). Specifically, the Office Action notes that the upper end of the claimed range (0.005%) is not particularly recited (Office Action dated August 31, 2007, p. 5). The Applicant respectfully submits that the range is contemplated in the specification and that one of skill in the art would recognize the existence of such a range as the specification particularly recites that high molecular weight polymers, when used,

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are “typically present in the range from about 0.0005% to about 0.5 wt%” (Specification, p. 15, lines 7-8). The Applicant is at a loss to understand how this range (which includes the currently claimed limitation) does not enable Claims 1, 4, 6, and 14 (as presently presented) because the claimed upper limit (0.005%) clearly falls within this range.

The Office Action argues that because several examples and listed ranges disclose a relatively high range of polymer, one of skill in the art would not understand that 0.005% could be an upper limit. The Applicant submits that the ranges are always described as ‘preferred’ or ‘exemplary’ and therefore one of skill in the art would understand that the ranges are merely *illustrative* and would not understand the ranges to exclude 0.005% as an upper limit especially in light of the above-mentioned language from the specification which includes the entire range from 0.0005% to about 0.5 wt%.

In light of the above arguments, the Applicant respectfully submits that the rejection under 35 U.S.C. §112, First Paragraph is improper and should be withdrawn.

Rejection Under 35 U.S.C. §103(a) Over WO 02/48458 in View of U.S. 3,624,019 and  
Evidenced by the *Mini-Encyclopedia of Papermaking Wet Chemistry*

Claims 1-14 are rejected under 35 U.S.C. §103(a) over Barnholtz et al (WO 02/48458 – hereinafter “Barnholtz”) in view of Anderson (U.S. 3,624,019 – hereinafter “Anderson”) and evidenced by the *Mini-Encyclopedia of Papermaking Wet Chemistry* (hereinafter “Mini-Encyclopedia”). The Applicant respectfully traverses this rejection on the ground that Barnholtz in view of Anderson does not provide the required showings from Graham v. John Deere Co., 381 U.S. 1, 148 USPQ 459 (1966). The four Graham factors are: (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the difference between the claimed invention and the prior art; and (4) objective evidence of nonobviousness.

In this case, the differences between the claimed invention and the prior art is well beyond the scope and content of the prior art. As argued previously, the Applicant claims a composition comprising, among other things, from about 0.0005% to about 0.005% of a high molecular polymer. The Office Action points out that Barnholtz discloses, *inter alia*, a high molecular weight polymer, present in an amount between 0.01% and 2% of the composition and that the polymer modifies the rheology of the composition (Office Action dated August 31, 2007, p. 6.) The Office Action agrees that the range taught in